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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,441	01/04/2001	Shinji Yoshihara	39303.20219.00	3382

25224 7590 09/22/2005  
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EXAMINER

NGUYEN, HAI V

ART UNIT PAPER NUMBER

2142

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/754,441	<b>Applicant(s)</b> YOSHIHARA ET AL.	
	<b>Examiner</b> Hai V. Nguyen	<b>Art Unit</b> 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is in response to the communication received on 27 June 2005.
2. Claims 26-34 are new.
3. Claims 1-34 are presented for examination.

### *Response to Arguments*

4. Applicant's arguments received on 27 June 2005 have been fully considered but they are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the following new ground(s) of rejection as explained here below.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-5, 7-20, 22-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Hara et al. U.S. patent # 6,438,611 B1.

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

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under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

7. As to claim 1, Hara, Network System For Ensemble Performance By Remote Terminals, discloses substantially the invention as claimed, including a system for composing music data representative of a music composition according to composing data representative of a material of the music composition, the system comprising a plurality of information processing terminals (*Fig. 2, terminals 22, 24, 25*) and a control station (*a server apparatus*) for mutually connecting the plurality of the information processing terminals through the control station, wherein each information processing terminal comprises a conversation section that can be operated to exchange messages with other information processing terminal, and an input section that can be operated by a user to input composing data while exchanging the messages with other information processing terminal (*Hara, Fig. 22, chat window 288, col. 24, lines 44-61*); and wherein the control station comprises a composing section that receives such composing data as inputted by a user (*a member*), and that composes and edits the music data according to the composing data inputted from the plurality of the information processing terminals to thereby collaborate the plurality of the information processing terminals for creating the music composition, so that the control station utilizes the composing data to compose a piece of music composition (*Hara, Abstract, col. 1, line 63 – col. 2, line 53; col. 7, line 5 – col. 8, line 28; col. 8, line 59 – col. 9, line 34*).

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8. As to claim 2, Hara discloses, a system for composing music data representative of a music composition according to composing data representative of a material of the music composition, the system comprising a plurality of information processing terminals (*Fig. 2, terminals 22, 24, 25*) and a control station (*a server apparatus*) for mutually connecting the plurality of the information processing terminals through the control station, wherein each information processing terminal comprises a conversation section that can be operated to exchange messages with other information processing terminal, and an input section that can be operated to input composing data while exchanging the messages with other information processing terminal (*Hara, Fig. 22, chat window 288, col. 24, lines 44-61*); and wherein the control station comprises a composing section that receives such composing data as inputted by a user (*a member*), and that composes and edits the music data according to the composing data inputted from the plurality of the information processing terminals to thereby collaborate the plurality of the information processing terminals for creating the music composition, so that the control station utilizes the composing data to compose a piece of music composition (*Hara, Abstract, col. 1, line 63 – col. 2, line 53; col. 7, line 5 – col. 8, line 28; col. 8, line 59 – col. 9, line 34*), and a control section that exclusively controls the inputting of the composing data among the plurality of the information processing terminals such that only one information processing terminal is allowed to input the composing data at one time to avoid conflict of the composing data among the information processing terminals (*Hara, by allocating performance parts individually to a plurality of operator elements...It becomes possible to ensure that the part assigned to*

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*a particular user is only affected by that user's performance operations, so that he or she can take part in a band performance without external interference in his or her own performance, col. 28, line 65 – col. 29, line 25).*

9. As to claim 3, Hara discloses, wherein the control station further comprises a public storage section for storing the music data such as to make the music data available publicly (*Hara, Fig. 2, database 28*).

10. As to claim 4, Hara discloses, wherein the control station further comprises a feedback section that feeds back the edited music data to the plurality of the information processing terminals so that each information processing terminal can collaborate with other information processing terminal for creating the music composition by repetition of the transmitting of the composing data and the receiving of the music data (*Hara, Abstract, col. 1, line 63 – col. 2, line 53; col. 7, line 5 – col. 8, line 28; col. 8, line 59 – col. 9, line 34*).

11. As to claim 5, Hara discloses, wherein each information processing terminal further comprises a downloading section that downloads a program from the control station so as to install an interface by the downloaded program for transmitting the composing data and receiving the music data (*Hara, Abstract, col. 1, line 63 – col. 2, line 53; col. 7, line 5 – col. 8, line 28; col. 8, line 59 – col. 9, line 34*).

12. As to claim 7, Hara discloses, wherein the information processing terminals include a child information processing terminal (*member terminal*) and a parent information processing terminal (*master terminal*) that has a higher capability of inputting the composing data than the capability of the child information processing

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terminal, thereby allowing the parent information processing terminal I/O to precede the child information processing terminal in the creation of the music composition (*Hara, col. 7, lines 5-67*).

13. As to claim 8, Hara discloses, wherein only the parent information processing terminal can instruct the control station to register the music composition while the child information processing terminal is allowed to download the music data of the registered music composition from the control station (*Hara, col. 7, lines 5-67*).

14. Claim 9 is corresponding method claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

15. Claim 10 is corresponding computer readable medium claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

16. Claim 11 is corresponding apparatus claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

17. Claim 12 is corresponding apparatus claim of claim 2; therefore, it is rejected under the same rationale as in claim 2.

18. Claims 13-15 are similar limitations of claims 3-5; therefore, they are rejected under the same rationale as in claims 3-5.

19. Claim 16 is corresponding method claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

20. Claim 17 is corresponding computer readable medium claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

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21. Claim 18 is corresponding apparatus claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

22. Claims 19-20, 22-23 are similar limitations of claims 4-5, 7-8; therefore, they are rejected under the same rationale as in claims 4-5, 7-8.

23. Claim 24 is corresponding method claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

24. Claim 25 is corresponding computer readable medium claim of claim 1; therefore, it is rejected under the same rationale as in claim 1.

***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 6, 21, 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hara** as applied to claims 1-5 above, and further in view of **Connick, Jr. U.S. patent # 6,348,648 B1**.

27. As to claim 6, Hara does not explicitly disclose, wherein each information processing terminal further comprises an output section for displaying the received music data in the form of a score of the music composition, so that the input section can input the composing data in the form of music symbols superposed on the displayed score of the music composition. Thus, the artisan would have been motivated to look into the related networking art for potential system for implementing displaying the



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received music data in the form of a score of the music composition, so that the input section can input the composing data in the form of music symbols superposed on the displayed score of the music composition.

In the same field of endeavor, Connick, related System And Method For Coordinating Music Display Among Players In An Orchestra, discloses, *"in Figs. 5-7 that displaying the received music data in the form of a score of the music composition, so that the input section can input the composing data in the form of music symbols superposed on the displayed score of the music composition (Connick, col. 7, lines 10-43).*

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention made to have incorporated Connick's teachings of the displaying the music score parts (*Connick, Figs. 5-7, col. 7, lines 10-43*) with the teachings of Hara, for the purpose of *allowing a conductor or composer to interactively modify a musical score and to transmit the modifications to individual musicians or selected groups of musicians in an orchestra (Connick, col. 1, lines 15-22) and allowing for the musicians to comfortably travel to and from rehearsals, recordings and performances with the device (Connick, col. 3, lines 42-55).*

28. Claim 21 is similar limitation of claim 6; therefore, it is rejected under the same rationale as in claim 6.

29. As to claim 26, Hara-Connick disclose, wherein the information processing terminal further comprises a display section that displays a music score area and a palette containing various music symbols for in enabling the user to input the composing

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data in the music score area using the music symbols (*Connick, Figs. 5-7, col. 7, lines 10-43*).

30. Claims 27-34 are similar limitations of claim 26; therefore, they are rejected under the same rationale as in claim 26.

31. Further references of interest are cited on Form PTO-892, which is an attachment to this action.

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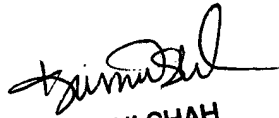
### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai V. Nguyen whose telephone number is 571-272-3901. The examiner can normally be reached on 6:00-3:30 Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hai V. Nguyen  
Examiner  
Art Unit 2142



KAMINI SHAH  
PRIMARY EXAMINER